

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte NICOLAS MARIE PIERRE GODINOT,  
KRYSTYNA MALGORZATA RANKIN and CAROL M. CHRISTENSEN

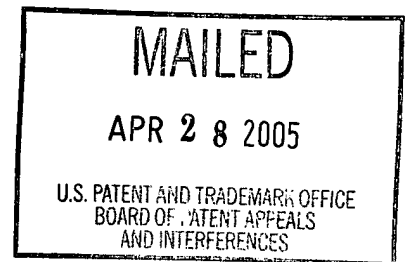
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Appeal No. 2004-2074  
Application No. 09/862,946

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ON BRIEF

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Before KRASS, JERRY SMITH and BARRY, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

Decision On Appeal

This is a decision on appeal from the final rejection of claims 1-6, and 13-18.

The invention pertains to a method for conducting taste and smell panel testing and for visually presenting the results of such tests.

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Representative independent claim 1 is reproduced as follows:

1. A method for visually presenting the taste attributes of sample comprising:

- (a) providing a subject;
- (b) providing the subject with a sensory perception scale for taste on a computing device containing a plurality of attributes selected from the group consisting of sweetness, saltiness, bitterness, sourness, mintiness, coolness, grittiness, burning, biting, tingling, bad after taste, and metallic; said sensory perception scale having variable positions;
- (c) providing the subject with a test sample and requesting said subject to sample the test sample;
- (d) asking the subject to rate from about 4 to about 6 attributes of the samples selected from the group consisting of from sweetness, saltiness, bitterness, sourness, mintiness, coolness, grittiness, burning, biting, tingling, bad after taste, and metallic; by manipulating the positions of the perception scale; and
- (e) providing the position of the variable position scale to a computing means, said computing means providing a simultaneous visual interpretation on a screen of the attributes of the sample.

The examiner relies on the following reference:

Darrington, "Extra sensory perception", Food Manufacture, vol. 65, n8, p51(2), pp. 1-3, October 1990.

Claims 1-6, and 13-18 stand rejected under 35 U.S.C. § 103 as unpatentable over Darrington.

Reference is made to the briefs and answer for the respective positions of appellants and the examiner.

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OPINION

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). To reach a conclusion of obviousness under § 103, the examiner must produce a factual basis supported by a teaching in a prior art reference or shown to be common knowledge of unquestionable demonstration. Our reviewing court requires this evidence in order to establish a prima facie case. In re Piasecki, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984). The examiner may satisfy his/her burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead the individual to combine the relevant teachings of the references. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

It is the examiner's position that Darrington discloses the subject matter of independent claim 1 but for an express disclosure of a computer device containing a plurality of attributes in which to rate the sample (answer-page 5, paragraph 5).

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The examiner finds, however, that Darrington teaches that the panel (subject) discusses how it will "vocalize" (answer-page 5, paragraph 6) its evaluation before each sample is tested, and concludes that it would have been obvious "to incorporate a list of set attributes for the subject to pick from for the advantage of standardizing and increasing the efficiency of the evaluation process" (answer-page 5, paragraph 6).

For their part, appellants argue that Darrington fails to disclose or suggest the specific attributes used to score the taste attributes, and also fails to suggest that 4 to 6 attributes be used. With regard to independent claim 13, appellants argue that Darrington does not suggest fragranced products, let alone the specific attributes set forth in the claims (principal brief-page 4).

With regard to the specific attributes used to score the taste attributes, instant claim 1 calls for a plurality of attributes "selected from the group consisting of. . ." and then goes on to list 12 taste attributes. The taste attributes, such as saltiness, sweetness, bitterness, sourness, etc. are/were well known, and such notoriety, taken together with Darrington's disclosure of "obvious descriptions such as shiny, salty, crumbly,. . ." (page 1 of the reference) would have made the use

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of at least two of the taste attributes listed in claim 1 obvious, within the meaning of 35 U.S.C. § 103.

With regard to Darrington failing to describe at least 4 to 6 attributes to be tested, we agree with the examiner that it would have been obvious to request testers to rate any number of taste attributes. Further, as noted by the examiner, at paragraph 4 of page 8 of the answer, appellants offer no evidence of criticality to the range "4 to about 6." In view of such a lack of disclosure as to criticality, and the known number of taste attributes, it would have been obvious to ask testers to evaluate products as to any number of taste attributes.

With regard to appellants' argument that there is no teaching, by Darrington, of "fragranced products," Darrington does disclose the testing for "aroma," which would clearly suggest the testing of "fragrance products."

Appellants next argue that Darrington does not suggest having the panelist manipulate the various recited attributes, which are then simultaneously put into a single score that the panelist can visualize; and then adjust the attributes as they see fit based upon the automatic feedback provided by the claimed invention. Rather, appellants argue, Darrington discloses that the products under test are scored on open line intensity scales

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and the mean data is then put into spider diagrams which show the response, thus indicating that the panelist data is not graphically presented and is not modified. Thus, appellants assert, "this disclosure can not be fairly said to provide a simultaneous response of the data to the panelist" (principal brief-page 4).

Rather than providing for a simultaneous visual interpretation, appellants assert that Darrington teaches that the scores are averaged and then put into a graphical form so that the panelist in Darrington cannot reconfigure the data based upon its presentation and the panelist's perception of the product. Appellants urge that Darrington "teaches away" from the instant invention "since the supervisor of the panels are compiling the data and using the mean data to score the results" (principal brief-page 4).

We will not sustain the rejection of claims 1-6, and 13-18 under 35 U.S.C. § 103.

The claims require the subject to be able to manipulate the positions of a perception scale, based on the rating to be given to a plurality of attributes, and the position of the variable position scale is provided to a computing means which provides a

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"simultaneous visual interpretation on a screen of the attributes of the sample."

We find nothing in Darrington which permits a subject to manipulate positions of a perception scale, based on a rating to be given to a plurality of attributes. Darrington provides for a subject to be placed in a tasting booth equipped with a computer terminal for scoring the intensity of a sensory parameter, such as sight, smell, touch, taste and hearing, on a line scale. Scoring of an intensity of a sensory parameter is not the same as manipulating positions of a perception scale, based on a rating to be given to attributes. The perception scale of the instant invention is an intuitive feel as to an amount of attribute sensed by the subject. The "numerical score" in Darrington is not based on a manipulation of a perception scale.

Furthermore, the computer in Darrington analyzes the numerical scores, which were produced by the tester evaluations, and provides a "spider map" of each product tested. While such map is not specifically shown in the three pages of the reference of record, from Darrington's description of the test and its analysis, the "spider map" does not appear to be a "simultaneous visual interpretation on a screen of the attributes of the sample," as required by the instant claims.





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